

DATE: May 26, 2004

FILE REF: 3500

TO: Natural Resources Board

FROM: Scott Hassett, Secretary

SUBJECT: Hearing Authorization for Revision of NR 326, Board Order #FH-42-04

1. Why are these rules being proposed?

2003 Wisconsin Act 118, which went into effect on February 6, 2004, modified provisions in chapter 30 governing the regulation of activities in Wisconsin's navigable public waters. The legislation establishes a new regulatory framework where activities are either authorized as exemptions; allowed under a general permit through rules adopted by Department; or reviewed under an individual permit process. This rule establishes standards for fish and wildlife structures that can be placed with an exemption, or under a general permit or individual permit.

2. Summary of Rule Proposal

The purpose of this rule is to establish construction, design and placement standards for projects to be eligible for statutory exemptions, establish general permits, and to establish standards for projects that may be authorized under an individual permit. NR 326 defines and describes design standards for piers, wharves, boat shelters, boat lifts, boat hoists and swimming rafts to qualify for exemptions. The rule establishes a general permit for preexisting piers that slightly exceed the exemption standards, and a general permit for permanent boat shelters.

The rule establishes standards for several types of individual pier permits: solid piers, piers on rock-filled cribs, commercial and municipal marinas, piers to accommodate a disability, and piers with historic use. Department staff will work with stakeholders prior to public hearing, to develop more specific standards for marinas, and identify any other general or individual permits that may be appropriate.

3. How does this proposal affect existing policy?

The rule creates standards for various structures to be placed under exemptions, general permits and individual permits. The standards are consistent with past standards used in shortform permits, past Department rule, guidance and practice, Wisconsin case law, and with the new regulatory framework of Act 118.

4. Has the Board dealt with these issues before?

Yes. The Board approved this as an Emergency Rule on April 6, 2004. The rule proposed for Hearing Authorization includes minor housekeeping changes and the following changes from the emergency rule:

- Modifies definition of "Open to the general public" to exclude facilities that require either purchase or rental of specific items
- Creates a definition for "Swimming raft" consistent with statutory definition, and including water trampolines; changes term "swim raft" to "swimming raft" throughout the rule

- Deletes a condition in NR 326.08(1) which limited exemptions to private piers, so that either private or marina piers can qualify for an exemption if they meet standards; re-numbers remaining conditions
- Clarifies in NR 326.08(5) that piers which do not qualify for an exemption, general permit or one of the specified individual permits may not be permitted
- Establishes a General Permit in NR 326.09(2) for permanent boat shelters, and establishes in NR 329.09(5)(b) that new permanent boat shelters which do not qualify for a general permit are prohibited
- Adds prohibitions that a swimming raft may not be attached to, or within 10 feet of, any pier, wharf, boathouse, boat shelter, boat hoist, or boat lift.

5. Who will be impacted by the proposed rules? How?

All types of waterfront property owners – from private landowners to business, builders and developers, will benefit from understanding the clear procedures and standards in the rules. The public who use and enjoy Wisconsin's navigable waters will also benefit from clear standards designed to protect public rights in navigable waters.

6. Information on environmental analysis, if needed.

The Bureau of Environmental Analysis and Review has determined that these rule revisions are a Type III action under s. NR 150, Wis. Adm. Code, and no environmental analysis is required.

7. Initial Regulatory Flexibility Analysis

See attached.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, RENUMBERING, AMENDING, REPEALING AND RECREATING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to repeal NR 326.04, 326.05 and 326.055; renumber 326.06, 326.07, 326.08 and 326.09; renumber and amend NR 326.03(1) and 326.08; amend NR 326 (title), NR 326.03(6), (8) and (10), and 326.10(title) and (2); repeal and recreate NR 326.01 and 326.02; and create NR 326 Subchapter (title) I, II, III and IV, NR 326.03(1b), (1c), (1d), (1g), (1k), (1p), (1t), (5g), (5m), (9g), (9m), (10m) and (14), 326.07, 326.08, 326.09 and 326.10(4) and (5); related to regulation of piers, wharves, boat shelters, boat hoists, boat lifts and swimming rafts in navigable waterways.

FH-42-04

Summary Prepared by the Department of Natural Resources

Statutory Authority: ss. 30.12(1), 30.12(1p), 30.12(3)(br), 30.13(1), 30.13(1m), 30.206, and 227.11(2), Stats.

Statutes interpreted: ss. 30.12(1), 30.12(1g)(a), (b), (e) and (f), 30.12(1p), 30.12(3), 30.12(3m), 30.13(1), 30.13(1m), 30.20(1g)(b)2. and 30.206, Stats.

Explanation of Agency Authority:

The Department has authority under s. 30.12, Stats., to promulgate rules that establish installation practices, construction and design requirements and limitations on the location of structures placed under statutory exemptions. The Department has authority under ss. 30.12 and 30.206, Stats., to promulgate rules to establish general permits.

Related statute or rule:

These rules relate directly to regulation of activities in navigable waters under ch. 30, Stats., waters designations in ch. NR 1, and the NR 300 series of rules.

Plain Language Analysis:

The purpose of this rule revision is to modify the existing rule to reflect the exemption, general permit and individual permit options provided by statute. This rule revision establishes construction, design, placement and location standards for projects to be eligible for statutory exemptions, establishes general permits for existing piers and permanent boat shelters, and establishes standards for projects that may be authorized under an individual permit.

Act 118 established statutory criteria for private piers and wharves to be exempt from state permit requirements under s. 30.12, Stats. This order reiterates those standards and establishes construction, design and location standards for exemption eligibility. Key standards include:

- May not be located in ASNRIs or public rights features.
- No longer than needed to reach 3-foot depth or length necessary to dock boat.
- Maximum width of 6', no deck, structures, or permanent fixtures allowed.
- 2 boat slips for first 50' of shoreline, 1 slip for each additional full 50'.
- Not solid structure or rock cribs
- Must not block water movement, cause sedimentation, or accumulate debris
- 10' setback from property line
- Blocks less than 25% of river, stream or channel
- Exempt deposit less than 2 cu yard and only under structure
- Exempt dredging up to 1 cu yd only under structure

Recognizing that a variety of individual structures may not comply with these standards, the rule takes advantage of the existing exemption authority under s. 30.13, Stats., to allow piers to be exempt under certain conditions. In addition, the rule creates a general permit to cover most piers or wharves that were

placed in 5 of the last 6 years. This general permit would be valid until the property changes ownership at which time the structure must be brought into compliance to remain exempt, or an individual permit must be obtained. The general permit would allow a single preexisting deck of 80 square feet or less and two additional boat slips, and is valid in ASNRI and public rights features areas. The general permit would not apply if the Department has taken enforcement action, has received a written complaint about the pier or wharf, or the owner has reconstructed or materially altered the pier or wharf after August 1, 2003.

This order also sets some additional standards to provide for consistent and orderly individual permit decisions for piers. The following types of individual permits for piers are available in this rule:

- Solid piers, only in outlying waters, Fox River, Mississippi River and Lake Winnebago.
- Piers on rock-filled cribs, only in a Great Lakes waterbody or Lake Geneva
- Commercial and municipal marinas
- Piers to accommodate disabilities using federal ADA standards
- Existing piers with historic use.

Act 118 also allows for exemptions for boat shelters, boat hoists and boat lifts. This order establishes standards for those exemptions, which are similar to those for piers and wharves above except:

- dimensional and design standards
- must be connected to uplands by pier
- 1 permanent, or 2 seasonal structures per 100' of shoreline, 1 additional seasonal structure per additional 50' of shoreline.

The rule creates a general permit for permanent boat shelters, using standards that were previously in NR 326. The rule prohibits new permanent boat shelters that do not qualify for the general permit.

Finally, this order also establishes standards for swimming rafts (including water trampolines). To qualify for an exemption, a swimming raft must meet standard, including:

- placed and maintained only by the riparian owner
- may not exceed 200 square feet or 38" in height.
- shall be seasonally placed
- dredging or deposits are not allowed.
- size and height restrictions do not apply to rafts removed from the water daily or placed in marked swim areas.

Federal Regulatory Analysis

Any activity that results in a discharge (including deposits and structures) into "waters of the United States" is regulated by the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act. An Individual Permit from the Corps is required, unless Wisconsin regulates the project in its entirety under chapter 30, Stats., in which case the project is authorized by the Corps under general permits GP-01-WI or GP-LOP-WI. Dredging or discharge into waters declared navigable under Section 10, Rivers and Harbors Act, 1899 is also regulated, and requires an Individual Permit from the Corps.

Comparison with Adjacent States

Minnesota is comparable to Wisconsin, with some regulations being slightly less restrictive, some slightly more. Their decision-making criteria are more subjective. Docks, floating or temporary structures, watercraft lifts and mooring facilities are allowed without a permit if they meet width and length standards and do not obstruct navigation or free flow of water. All wharves and marina mooring facilities require an individual permit from the Minnesota DNR.

Michigan is comparable to Wisconsin in their restrictions, though their decision-making criteria are more subjective. Permanent docks or boat hoists require a permit from the Michigan Department of Environmental Quality. Seasonal docks and hoists do not require a permit if they are for private, non-commercial use by a landowner, do not unreasonably interfere with the use of the water by others, and do not interfere with water flow. Marina operating permits are required.

Illinois is generally less restrictive and their decision-making criteria are more subjective. A statewide permit is available for minor docks that meet dimensional and other standards. Otherwise, an individual permit is required from Illinois DNR for structures in public waters or in the floodways of rivers, lakes and streams.

Iowa is generally more restrictive, though their decision-making criteria are subjective. A general permit is available for certain private docks that meet dimensional standards. Otherwise, a Sovereign Lands Construction Permit from the Iowa DNR is required for all other piers, and for all other structures in public waters or in the floodway. The applicant must analyze the availability of alternatives and measures to prevent, minimize or mitigate adverse impacts to natural resources or public use of the affected area.

Summary of Factual Data and Analytical Methodologies:

The literature on the ecological and related impacts of piers and similar structures is well-summarized in Research Report 177, The Construction, Aesthetics and Effects of Lakeshore Development: A Literature Review, Sandy Engel and Jerry L. Pederson, Jr., December 1998; and Waters of Wisconsin: The Future of Our Aquatic Ecosystems and Resources. Madison, WI: Wisconsin Academy of Sciences, Arts and Letters, 2003. In addition, data on actual field conditions from Department files is used.

Analysis and Documents supporting determination of Small Business Effect:

Anticipated Private Sector Costs:

Effect on Small Business:

Agency Contact Person: Liesa Nesta, Liesa.Nesta@dnr.state.wi.us, (608) 266-2997

Place where comments are to be submitted and deadline for submission: To be determined.

SECTION 1. Chapter NR 326 (title) is amended to read:

**PIERS, WHARVES, BOAT SHELTERS, BOAT HOISTS, BOAT LIFTS, AND ~~SWIM~~ SWIMMING RAFTS
IN NAVIGABLE WATERWAYS**

SECTION 2. NR 326, subch. I (title) is created to read:

**SUBCHAPTER I
GENERAL PROVISIONS**

[Drafter's Note: This title shall be inserted at the beginning of the chapter, and contain ss. NR 326.01 through 326.04.]

SECTION 3. NR 326.01 is repealed and recreated to read:

NR 326.01 Purpose. The purpose of this chapter is to establish reasonable procedures and limitations for exempt activities, general permits and individual permits for placement of piers, wharves, boat shelters, boat hoists, boat lifts and swimming rafts in navigable waterways as regulated under s. 30.12, Stats., in order to protect the public rights and interest in the navigable, public waters of the state as defined in s. 30.10, Stats.

SECTION 4. NR 326.02 is repealed and recreated to read:

NR 326.02 Applicability. This chapter applies to construction, placement and maintenance of piers, wharves, boat shelters, boat hoists, boat lifts and swimming rafts regulated under ss. 30.12(1), (1g)(a), (b), (e) and (f), (3) and (3m), 30.13(1) and (1m) and 30.20(1g)(b)2., Stats. Any person that intends to construct, place or maintain a pier, wharf, boat shelter, boat hoist, boat lift or swimming raft in any navigable waterway shall comply with all applicable provisions of this chapter and any permit issued under this chapter.

SECTION 5. NR 326.03(1) is renumbered 326.03(1f), and as renumbered is amended to read:

NR 326.03(1f) “Boat shelter” ~~as defined has the meaning given in s. 30.01(1c), Stats., means a structure in navigable waters designed and constructed for the purpose of providing cover for a berth place for watercraft, which may have a roof but may not have walls or sides. Such a structure may include a boat hoist.~~

SECTION 6. NR 326.03 (6), (8) and (10) are amended to read:

NR 326.03(6) “Ordinary high water mark” ~~has the definition contained in s. NR 320.03 (4).~~ means the point on the banks or shore up to which the presence and action of water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation or other easily recognizable characteristics.

(8) “Pier” ~~as defined has the meaning given in s. 30.01 (5), Stats., means any structure extending channelward from the shore with water on both sides, built or maintained for the purpose of providing a berthing or mooring place for watercraft or for loading or unloading cargo or passengers onto or from watercraft. Such a structure may include a boat shelter which is removed seasonally.~~

(10) “Riparian” means an owner of land ~~adjacent to~~ abutting a navigable waters waterway.

SECTION 7. NR 326.03 (1b), (1c), (1d), (1g), (1k), (1p), (1t), (5g), (5m), (5r), (9g), (9m), (10m) and (14) are created to read:

NR 326.03(1b) “Area of special natural resource interest” has the meaning in s. 30.01(1am), Stats., and as identified by the department in s. NR 1.05.

Note: “Area of special natural resource interest” means any of the following:

- (a) A state natural area designated or dedicated under ss. 23.27 to 23.29, Stats.
- (b) A surface water identified as a trout stream by the department under NR 1.02(7).
- (bm) A surface water identified as an outstanding or exceptional resource water under s. 281.15, Stats.
- (c) An area that possesses significant scientific value, as identified by the department in NR 1.05.

Information and lists can be obtained by contacting the department, or found on the department's website at www.dnr.wi.gov, under the topic “Waterway and Wetland Permits”.

(1c) “Boat hoist” means a structure attached to a pier or wharf or shoreline that is designed and placed for the purpose of lifting a docked boat out of the water.

(1d) “Boat lift” means a structure placed adjacent to a pier or wharf or shoreline, that is designed and placed for the purpose of lifting a docked boat out of the water.

(1g) “Boat slip” means any place along or adjacent to a pier or wharf where a boat is docked, including a space outlined by catwalks or created by placement of a boat shelter, boat lift or boat hoist. A boat slip does not include a space occupied for less than 24 hours by a guest at a private pier.

(1k) “Change in ownership” for the purposes of this chapter means transfer or conveyance of some or all of the riparian property, but does not include conveyances to a spouse, sibling, child or grandchild, conveyances to a trust created for the benefit of a spouse, sibling, child or grandchild, or a conveyance to a partnership, limited liability company or corporation controlled by the original riparian owner.

(1p) “Commercial marina” means a facility containing piers, wharves and other mooring spaces, where the riparian property is not owned by a municipality, but is open to the general public, and the primary purpose of the facility is to provide boats or boat slips either for rental or for free.

(1t) “Deck” means any portion of a pier that exceeds 6-feet in width. Width shall be measured across the shortest horizontal distance of any given portion of the pier surface.

(5g) “Municipal marina” means a facility containing piers, wharves and other mooring spaces, where the riparian property is owned by a municipality and the primary purpose of the facility is to provide boats or boat slips for rental or for free.

(5m) “Navigable waterway” means any body of water with defined bed and banks, which is navigable under the laws of the state. In Wisconsin, a navigable body of water is capable of floating the lightest boat or skiff used for recreation or any other purpose on a regularly recurring basis.

(5r) “Open to the general public” means available to any person conditioned only upon the payment of a reasonable fee. “Open to the general public” does not include conditions that require purchase of a boat, boat slip, parcel of property, condominium unit or membership in a club or organization; and does not include conditions that require rental of a room, apartment, condominium unit, residence, campsite or parcel of property.

(9g) “Private pier or wharf” means a pier or wharf which is not part of a commercial marina or a municipal marina.

(9m) “Reasonable fee” means a fee comparable to those charged the general public for similar facilities on the waterway or a similar waterway in the vicinity.

(10m) “Seasonal” for the purposes of this chapter means a pier, wharf, boat shelter, boat lift, boat hoist or swimming raft which is removed from the water between November 1 and April 1 annually.

(11m) “Swimming raft” has the meaning given in s. 30.01(6e), Stats., and includes a water trampoline.

(14) “Wharf” has the meaning given in s. 30.01(8), Stats.

SECTION 8. NR 326.04, 326.05 and 326.055 are repealed.

SECTION 9. NR 326.06 to 326.09 are renumbered NR 326.05, 326.04, 326.10 and 326.06, respectively.

SECTION 10. NR 326.07 is created to read:

NR 326.07 Enforcement. (1) Noncompliance with the provisions of ss. 30.12, 30.20 and 30.206, Stats., this chapter, or any conditions of an exemption, general permit or individual permit issued by the department, constitutes a violation and may result in a forfeiture. If the activity is a general permit under s. 30.206, Stats., the failure to follow procedural requirements may not, by itself, result in abatement of the activity. The department may seek abatement of any activity in violation of ss. 30.12, 30.20 and 30.206, Stats.

(2) General permits may not be issued for after-the-fact permit applications. When an after-the-fact permit application has been filed with the department, the department shall follow the procedures in ch. NR 301 for violations.

(3) Any reference in ss. 30.15, 30.292, 30.294 and 30.298, Stats., to any provision of ch. 30, Stats., shall include any rules promulgated under that provision.

(4) No person may place a pier, wharf, boat shelter, boat hoist, boat lift or swimming raft in a navigable waterway if the activity is not eligible for an exemption, authorized by a general permit or individual permit issued under this chapter, or otherwise authorized under this chapter.

SECTION 11. NR 326, subch. II (title) is created to read:

SUBCHAPTER II PIERS AND WHARVES

[Drafter's Note: This title shall be inserted after s. NR 326.07 and contain s. NR 326.08 as created.]

SECTION 12. NR 326.08 is created to read:

NR 326.08 Pier and wharf standards. (1) EXEMPTIONS. (a) *Procedures.* Exemptions shall be processed according to the procedures in ch. NR 310.

(b) *Applicable activities.* A pier or wharf that meets all the standards in par. (c) shall be exempt under s. 30.12(1g)(f), Stats.

(c) *Standards.* 1. The pier or wharf may not be located in an area of special natural resource interest as defined in s. 30.01(1am), Stats., and identified by the department in s. NR 1.05.

2. The pier or wharf may not be located where there are public rights features as defined in s. NR 1.06.

3. The pier or wharf may be placed and maintained only by a riparian owner.

4. The pier or wharf may not extend into the water from the shoreline beyond the line of navigation or the length of the boat using the pier unless a need can be demonstrated by the riparian that boats using the pier require a greater depth of water. The depth of water necessary for nonfixed keel sailboats shall be measured with the centerboard or dagger boards raised.

5. The pier or wharf may not exceed 6 feet in width and may not include a deck.

6. The pier or wharf may not have more than 2 boat slips for the first 50 feet of riparian owner's shoreline footage and no more than one additional boat slip for each additional full 50 feet of shoreline footage.

7. The pier or wharf may not be a solid structure, or constructed on rock-filled cribs or similar size and type devices serving as a foundation.

8. The pier or wharf may not totally enclose any portion of a navigable waterway.

9. The pier or wharf may not interrupt the free movement of water nor cause the formation of land by deposition of littoral drift upon the bed of the waterway.

10. The pier or wharf may not be constructed or maintained with a screen or similar structure underneath or in any other manner which would trap or accumulate aquatic plants or other debris.

11. The pier or wharf and any boats, boat shelters, hoists or lifts associated with it shall be located entirely within the riparian's zone of interest, as determined by one of the methods outlined in s. NR 326.04.

12. The pier or wharf shall be set back a minimum of 10 feet from the riparian zone line on each side, unless an applicable municipal ordinance requires a side setback which is more restrictive. If the riparian property contains less than 35 feet of shoreline footage, the pier owner shall place the pier or wharf following the technique outlined in s. NR 326.04(3) in order to fairly apportion riparian rights.

13. The pier or wharf may not have any structures placed on it or attached to it, with the exception of the following temporary structures which shall be removed between November 1 and April 1 annually: a ladder, a bench not to exceed 2-feet wide by 8-feet long, chairs, a table, flower pots and a flagpole.

14. Subject to the boat slip limitations in subd. 6., the pier or wharf may have an associated seasonal boat shelter, boat hoist or boat lift that meets the requirements of s. NR 326.09.

15. The pier or wharf shall comply with all local ordinance requirements.

16. If the pier or wharf is not seasonal, it shall be marked with reflective material that is 3 feet above the winter water level on the lakeward end between November 1 and April 1 annually.

17. A pier or wharf on a river, stream or channel may not extend out more than 25% of the width across the river, stream or channel.

18. A deposit of sand, gravel or stone under s. 30.12(1g)(a), Stats., may be associated with the placement of any pier or wharf provided the deposit is limited to the area underneath or within one foot of the posts or pilings and is less than 2 cubic yards.

19. Dredging under s. 30.20(1g)(b)1., Stats., is allowed for the placement of a pier or wharf, provided it is limited to incidental dredging not to exceed one cubic yard associated with jet-installation of permanent posts or pilings.

Note: Removal of aquatic vegetation is limited to the amount necessary for placement of the pier or wharf under ch. NR 109.

(d) *Permit not required.* 1. A pier or wharf may be placed under s. 30.13(1), Stats., without a permit under s. 30.12(1), Stats., if the structure complies with all the requirements in par. (c) with the following exceptions or limitations:

a. The pier or wharf may extend out to the approved local pierhead line on the waterway.

b. The pier or wharf may contain one additional boat slip beyond the number allowed in par. (c)6.

c. The pier or wharf may be located on the Lower St. Croix River as defined in s. 30.27, Stats., provided it does not exceed 50-feet in length.

d. The pier or wharf including boat slips may be located in an area of special natural resource interest as defined in s. 30.01(1am), Stats., and identified by the department in s. NR 1.05.

2. A pier or wharf may be placed under s. 30.13(1), Stats., without a permit under s. 30.12(1), Stats., if it was authorized by a consent order entered into with the department prior to the effective date of this subchapter ...[revisor insert date].

(e) Activities which do not meet the standards in par. (c) or are determined ineligible for an exemption by the department shall require a general permit or individual permit. Activities which do not meet the standards in par. (d) or s. 30.13(1), Stats., shall require a general permit or individual permit.

(2) GENERAL PERMITS. (a) *Procedures.* General permits shall be processed according to the procedures in ch. NR 310.

(b) *Applicable activities.* An existing pier or wharf that meets all the criteria in par. (c) shall be eligible for general permit coverage under ss. 30.12(3)(br) and 30.206, Stats.

(c) *General permit standards for existing pier or wharf.* An existing pier or wharf which was in place on August 1, 2003 may be authorized under this general permit if it meets all of the requirements of sub. (1)(c) with the following exceptions or additional limitations:

1. The pier may contain a single deck at the lakeward end of the pier only, provided the owner can demonstrate that the deck was placed in 5 of the 6 years beginning with 1998 and ending with 2003, and provided that the total surface area of the deck and pier at the lakeward end does not exceed 80 square feet.

2. The owner may have 2 boat slips at the riparian property in addition to the number allowed by sub. (1)(c)6., provided the owner can demonstrate that the higher number of boat slips was in use in 5 of the 6 years beginning with 1998 and ending with 2003.

3. The pier or wharf may be located in an area of special natural resource interest as defined in s. 30.01(1am), Stats., and identified by the department in s. NR 1.05 or where there are public rights features as defined in s. NR 1.06 provided it meets subds. 1. and 2.

4. The general permit shall expire upon change of ownership of all or part of the riparian property on which the pier or wharf is located, and the pier or wharf shall be brought into compliance with ch. 30, Stats., and this chapter on the date of change of ownership.

(d) A pier or wharf is not eligible for a general permit if:

1. The department commenced or completed enforcement action or otherwise notified a pier or wharf owner in writing that the pier or wharf presents a potential obstruction to navigation or potentially detrimental to the public interest, prior to August 1, 2003;

2. The department received a written complaint about the pier or wharf prior to August 1, 2003; or

3. The riparian owner reconstructed or materially altered the pier or wharf after August 1, 2003.

(e) Activities which do not meet the standards in par. (c) or are ineligible for a general permit under par. (d) shall require an individual permit.

(3) INDIVIDUAL PERMITS. (a) *Procedures.* Individual permits shall be processed according to the procedures in ch. NR 310.

(b) *Applicable activities.* Any pier or wharf which is not exempt under sub. (1), and is not authorized by a general permit under sub. (2), requires authorization by an individual permit pursuant to s. 30.12(1), Stats.

(c) *Individual permit standards for solid piers.* A solid pier meeting the standards in s. 30.12(3m), Stats., may be authorized under an individual permit subject to the following limitations.

1. Solid piers may be permitted only on the following waters:

- a. Outlying waters.
- b. Harbors connected to outlying waters.
- c. Fox river from the DePere dam to Lake Winnebago.
- d. Lake Winnebago.
- e. Mississippi river.

2. Solid piers shall be provided with a sufficient opening to provide for the passage of littoral drift. The opening size shall be adequate to prevent the deposition of littoral drift considering wave energy, littoral drift supply and near-shore water depths.

(d) *Individual permit standards for a pier on rock-filled cribs.* A pier on rock-filled cribs or similar structures used to provide a pier foundation or support, meeting the standards in s. 30.12(3m), Stats., and located on a Great Lakes water body or on Lake Geneva in Walworth county, may be authorized under an individual permit, provided the pier or wharf does not have more than 2 boat slips for the first 50 feet of riparian owner's shoreline footage and no more than one additional boat slip for each additional full 50 feet of shoreline footage.

(e) *Individual permit standards for a commercial or municipal marina.* Piers or wharves for a commercial marina meeting the standards in s. 30.12(3m), Stats., may be authorized under an individual permit.

(f) *Individual permit standards for private pier or wharf to accommodate a disability.* A single private pier or wharf meeting the standards in s. 30.12(3m), Stats., and all the conditions in s. NR 326.08(1) except for size and design, may be authorized under an individual permit provided the riparian can demonstrate that a different pier or wharf size or design is necessary to accommodate a disability of a resident of the riparian property. The permit shall expire when the person with a disability is no longer a resident of the property.

Note: Department designs for piers at public facilities, which meet federal ADA accessibility guidelines, are recommended. Information is available from the department on request.

(g) *Individual permit standards for existing pier or wharf with historic use.* A private pier or wharf meeting the standards in s. 30.12(3m), Stats., and all the conditions in s. NR 326.08(1) with the exception of pier length, number of boat slips, being constructed on rock-filled cribs or being located in an area of special natural resource interest may be authorized under an individual permit provided the riparian can demonstrate that the length, higher number of boat slips and cribs were historically placed permanently or seasonally at the same waterfront property in the same approximate location and in the same approximate configuration in 5 of the 6 years beginning with 1998 and ending with 2003. In no case may the individual permit authorize a length or number of boat slips that exceeds the historic length or number of boat slips.

(4) EXISTING PERMITS. A pier or wharf which is authorized by an existing department permit shall continue to be authorized, provided the structures are maintained in compliance with all the conditions of the original permit. Any modifications to the pier or wharf that do not comply with the original permit conditions shall require a new individual permit and shall comply with all standards in sub. (3).

(5) PROHIBITION. A pier or wharf which is not eligible for an exemption, general permit, or individual permit under par. (3)(c) through (g), or otherwise authorized under this subchapter may not be permitted.

SECTION 13. NR 326, subch. III (title) is created to read:

SUBCHAPTER III
BOAT SHELTERS, BOAT HOISTS AND BOAT LIFTS

[Drafter's Note: This title shall be inserted after s. NR 326.08, and contains s. NR 326.09 as created.]

SECTION 14. NR 326.09 is created to read:

NR 326.09 Boat shelter, boat hoist and boat lift standards. (1) EXEMPTIONS. (a) *Procedures.* Exemptions shall be processed according to the procedures in ch. NR 310.

(b) *Applicable activities.* A seasonal boat shelter, boat hoist or boat lift that meets all the criteria in par. (c) shall be exempt under s. 30.12(1g)(e), Stats.

(c) *Standards.* 1. The boat shelter, boat hoist or boat lift may not be located in an area of special natural resource interest as defined in s. 30.01(1am), Stats., and identified by the department in s. NR 1.05.

2. The boat shelter, boat hoist or boat lift may not be located where there are public rights features as defined in s. NR 1.06.

4. The boat shelter, boat hoist or boat lift may be placed and maintained only by a riparian.

5. The boat shelter, boat hoist or boat lift shall allow the free movement of water underneath and may not cause formation of land on the bed of the waterway.

6. The boat shelter, boat hoist or boat lift shall comply with applicable provisions of any municipal ordinances adopted under s. 30.12(3)(a)6. and (c), Stats.

7. Except for designations under s. 30.275, Stats., the structure may not be placed in any waterway designated by federal, state or local government as having outstanding scenic values.

8. The structure shall be located entirely within the riparian's zone of interest, as determined by one of the methods outlined in s. NR 326.04.

9. All boat shelters shall be designed and used exclusively for the berthing of a single watercraft. Any boat shelter originally placed or permitted after September 1, 1991 may not exceed an outside dimension of 12 feet wide by 24 feet long on waters under 1000 acres in size and may not exceed an outside dimension of 14 feet wide by 24 feet long on waters 1000 acres and larger in size. The burden of proving that a boat shelter was placed prior to September 1, 1991 shall be on the owner. A seasonal boat shelter originally placed prior to September 1, 1991 and which does not comply with this subsection may not be expanded in size.

10. A boat shelter shall be connected to adjacent uplands by a pier.

11. A structure may include a roof but may not include walls, sides or equivalent construction such as canvas side drops. A boat shelter roof shall be pitched not less than one foot nor more than 2.5 feet from the roof peak to the bottom of the eaves. Only the size and number of vertical components required to support the watercraft and any roof are permitted.

12. Storage facilities may only be included above the eaves of a boat shelter.

13. A boat shelter may include only a single sign necessary to identify the property and may only include lighting essential for safety and mooring.

14. A riparian owner may place no more than one boat shelter, boat lift or boat hoist for each boat slip that is authorized under subch. II.

15. Permanent and seasonal boat shelters shall be placed as close together as practicable at a single location adjacent to each property. Adjacent lots in common ownership shall be considered a single property for the purpose of this subsection.

16. A deposit of sand, gravel or stone under s. 30.12(1g)(a), Stats., may be associated with the placement of any boat shelter, boat hoist or boat lift provided the deposit is limited to the area underneath or within one foot of the posts or supports and is less than 2 cubic yards.

17. Dredging under s. 30.20(1g)(b)1., Stats., is not allowed for the placement or maintenance of any boat shelter, boat hoist or boat lift.

18. The structure may not extend beyond the line of navigation or the approved local pierhead line on the waterway.

(d) A boat shelter, boat lift or boat hoist may be located in an area of special natural resource interest as defined in s. 30.01(1am), Stats., and identified by the department in s. NR 1.05, provided it complies with par. (c)2. through 18., and to the extent authorized under s. NR 326.08(1)(d)1.d.

(e) Activities which do not meet the standards in par. (c) or are determined ineligible for an exemption by the department shall require a general permit or individual permit.

(2) GENERAL PERMITS. (a) *Procedures.* General permits shall be processed according to the procedures in ch. NR 310.

(b) *Applicable activities.* A permanent boat shelter that meets all the criteria in par. (c) shall be eligible for general permit coverage under ss. 30.12(3)(a)6. and 30.206, Stats.

(c) *Permanent boat shelters.* A boat shelter which is not seasonal may be authorized by the department as a permanent boat shelter if the project complies with sub. (1)(c) and the following requirements.

1. No permit may be granted for a permanent boat shelter constructed after May 3, 1988 if the owner's riparian property also contains a boathouse over navigable waters or within 75 feet of the ordinary high water mark. Each permit issued for a permanent boat shelter shall contain a condition which provides that the permit becomes void if there is any subsequent construction of a boathouse over navigable waters adjacent to the owner's property or within 75 feet of the ordinary high water mark on the owner's property.

2. A permit may not be granted for a permanent boat shelter to be placed on lakes or flowages of less than 500 acres or on rivers except the Mississippi river, the Wolf river from Lake Butte des Morts to the upstream limits of the village of Fremont, and the Fox river from the DePere dam to Lake Winnebago. For the purpose of this subsection, a series of lakes or flowages which have a connection which is commonly navigated by motorized craft and which have a common water level shall be considered a single lake or flowage. Artificial mooring basins and navigation channels and reaches of rivers where water levels are controlled by a dam are considered part of the lake or flowage to which they are connected for the purpose of this subsection.

3. No more than one permanent boat shelter may be permitted for each riparian property. Contiguous lots in common ownership shall be considered one property for the purpose of this subsection.

4. A permanent boat shelter may not extend more than 30 feet from the shoreline or to the line of navigation, whichever is less, on rivers named in subd. 2. and on waters between 500 and 1000 acres in

size and may not extend more than 50 feet from the shoreline or to the line of navigation, whichever is less, on waters 1000 acres and larger in size. For the purpose of this subsection the shoreline shall be established at normal summer low water levels.

5. Permits for permanent boat shelters may only be granted for locations adjacent to developed shorelines. Developed shorelines are those where there are at least 5 principal structures including at least one on the applicant's property which are located within 500 feet of the proposed shelter site and which are visually intrusive as viewed from a location on the water.

(3) INDIVIDUAL PERMITS. (a) *Procedures.* Individual permits shall be processed according to the procedures in ch. NR 310.

(b) *Applicable activities.* Any boat shelter, boat hoist or boat lift which is not exempt under sub. (1), and is not authorized by a general permit under sub. (2), requires authorization by an individual permit pursuant to s. 30.12(1), Stats.

(4) EXISTING PERMITS. A permanent boat shelter which is authorized by an existing department permit shall continue to be authorized, provided the structure is maintained in compliance with all the conditions of the original permit. Any modifications to the permanent boat shelter that do not comply with the original permit conditions shall require a new general permit under sub. (2) or individual permit under sub. (3).

(5) PROHIBITION. (a) A boat shelter, boat hoist or boat lift which is not eligible for an exemption, general permit or individual permit or otherwise authorized under this subchapter may not be permitted.

(b) Except where authorized by a general permit under sub. (2), construction of a new permanent boat shelter is prohibited.

SECTION 15. NR 326, subch. IV (title) is created to read:

SUBCHAPTER IV SWIMMING RAFTS

[Drafter's Note: This subchapter shall be inserted after s. NR 326.09, and contain s. NR 326.10 as renumbered and amended.]

SECTION 16. NR 326.10(title), as renumbered, is amended to read:

NR 326.10 ~~Swim rafts~~ Swimming raft standards

SECTION 17. NR 326.10(2), as renumbered, is amended to read:

NR 326.10 (2) EXEMPTIONS. (a) ~~Swim~~ Procedures. Exemptions shall be processed according to the procedures in ch. NR 310.

(b) Applicable activities. A seasonal swimming raft that meets all the criteria in par. (c) shall be exempt under ss. 30.12(1g)(b) and 30.13(1), Stats.

(c) Standards. 1. The swimming raft may be placed and maintained only by a riparian.

2. The swimming raft may not exceed 200 square feet in surface area or 38 inches in height above the water level.

3. A deposit of sand, gravel or stone under s. 30.12(1g)(a), Stats., may not be associated with the placement of any swimming raft.

4. Dredging under s. 30.20(1g)(b)1., Stats., is not allowed for the placement or maintenance of any swimming raft.

5. The size and height limitations of sub. (1) do not apply to swimming rafts which are pulled onto shore and completely removed from the water on a daily basis or that are placed in swim areas marked and approved pursuant to s. NR 5.09 ~~are exempt from sub. (1).~~

(b) 6. The height limitation of sub. (1) does not apply to protective covers, diving boards, ladders and slides.

(d) Activities which do not meet the standards in par. (c) or are determined ineligible for an exemption by the department shall require a general permit or individual permit.

SECTION 18. NR 326.10(4), (5) and (6) are created to read:

NR 326.10 (4) INDIVIDUAL PERMITS. (a) *Procedures.* Individual permits shall be processed according to the procedures in ch. NR 310.

(b) *Applicable activities.* Any swimming raft which is not exempt under s. NR 326.10(2), and is not authorized by a general permit under s. 30.206, Stats., requires authorization by an individual permit pursuant to s. 30.12(1), Stats.

(5) EXISTING PERMITS. A swimming raft which is authorized by an existing department permit shall continue to be authorized, provided the structure is maintained in compliance with all the conditions of the original permit. Any modifications to the swimming raft that do not comply with the original permit conditions shall require a new individual permit and shall comply with all standards in sub. (4).

(6) PROHIBITION. (a) A swimming raft which is not eligible for an exemption, general permit or individual permit or otherwise authorized under this subchapter may not be permitted.

(b) A swimming raft may not be attached to a pier, wharf, boathouse, boat shelter, boat hoist or boat lift.

(c) A swimming raft may not be located within 10 feet of any pier, wharf, boathouse, boat shelter, boat hoist or boat lift.

SECTION 19. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 20. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

(SEAL)

By _____
Scott Hassett, Secretary

Fiscal Estimate — 2003 Session

<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Updated	LRB Number	Amendment Number if Applicable
<input type="checkbox"/> Corrected	<input type="checkbox"/> Supplemental	Bill Number	Administrative Rule Number NR 326

Subject

Regulation of piers, wharves, boat shelters, boat hoists, boat lifts and swimming rafts in navigable waterways

Fiscal Effect

State: ☐ No State Fiscal Effect

☐ Indeterminate

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

☐ Increase Existing Appropriation

☐ Increase Existing Revenues

☐ Decrease Existing Appropriation

☒ Decrease Existing Revenues

☐ Create New Appropriation

☐ Increase Costs — May be possible to absorb within agency's budget.

☐ Yes ☐ No

☒ Decrease Costs

Local: ☐ No Local Government Costs

☐ Indeterminate

1. ☐ Increase Costs

☐ Permissive ☐ Mandatory

3. ☐ Increase Revenues

☐ Permissive ☐ Mandatory

2. ☐ Decrease Costs

☐ Permissive ☐ Mandatory

4. ☐ Decrease Revenues

☐ Permissive ☐ Mandatory

5. Types of Local Governmental Units Affected:

☐ Towns ☐ Villages ☐ Cities

☐ Counties ☐ Others

☐ School Districts ☐ WTCS Districts

Fund Sources Affected

☐ GPR ☐ FED ☒ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Chapter 20 Appropriations

20.370(4)(bi)

Assumptions Used in Arriving at Fiscal Estimate

Administrative Rule Summary:

This rule modifies the regulation of piers, wharves, boat shelters, hoists and lifts, and swimming rafts in navigable waters. It is part of the implementation of Act 118, legislation related to air and water regulatory permits.

NR 326 establishes construction, design and placement standards for projects to be eligible for statutory exemptions, establishes general permits, and establishes standards for projects that may be authorized under an individual permit. The rule defines and describes design standards for piers, wharves, boat shelters, boat lifts, boat hoists and swimming rafts to qualify for exemptions. The rule establishes a general permit for preexisting piers that slightly exceed the exemption standards, and a general permit for permanent boat shelters. Finally, the rule establishes standards for several types of individual pier permits: solid piers, piers on rock-filled cribs, commercial and municipal marinas, piers to accommodate a disability, and piers with historic use..

Fiscal Impact:

Most of the permitting activities covered by this administrative rule remain unchanged in terms of the workload required by Department staff and revenues generated by required permits. The exception is for permanent boat shelter permits, which were issued on an individual permit basis prior to Act 118, and will be issued as general permits under this proposed administrative rule. The net fiscal impact is estimated to be a workload decrease of about 95 hours/year, which equates to about \$2,000 in salary and fringe benefits, and a revenue decrease of about \$4,800/year.

Overall, the full implementation of Act 118 and its multiple related rules is not expected to have a major impact on DNR water permit revenues or workload.

Long-Range Fiscal Implications

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	

Fiscal Estimate — 2003 Session

Page 2 Assumptions Narrative Continued

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number

Assumptions Used in Arriving at Fiscal Estimate – Continued

Fiscal Estimate Worksheet — 2003 Session

Detailed Estimate of Annual Fiscal Effect

<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected <input type="checkbox"/> Supplemental	LRB Number Bill Number	Amendment Number if Applicable Administrative Rule Number <div style="text-align: center;">NR 326</div>
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Subject

Regulation of piers, wharves, boat shelters, boat hoists, boat lifts and swimming rafts in navigable waterways.

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations — Salaries and Fringes		\$	\$ - 2,000
(FTE Position Changes)		(FTE)	(FTE)
State Operations — Other Costs			-
Local Assistance			-
Aids to Individuals or Organizations			-
Total State Costs by Category		\$	\$ -
B. State Costs by Source of Funds			
GPR		\$	\$ -
FED			-
PRO/PRS			- 2,000
SEG/SEG-S			-
State Revenues		Increased Revenue	Decreased Revenue
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			- 4,800
SEG/SEG-S			-
Total State Revenues		\$	\$ -

Net Annualized Fiscal Impact

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$ -2,000	\$
Net Change in Revenues	\$ -4,800	\$

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature	Telephone No. 266-2794	Date (mm/dd/ccyy)